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BEFORE THE  
BOARD OF MEDICAL QUALITY ASSURANCE  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

VICTOR GUBERSKY, M.D.

Respondent

CASE NO. D-3015

N-21073

DECISION

The attached Proposed Decision of the Administrative Law  
Judge is hereby adopted by the Board of Medical Quality  
Assurance as its Decision in the  
above-entitled matter.

This Decision shall become effective on February 6, 1984.

IT IS SO ORDERED January 5, 1984.



MILLER MEDEARIS  
Secretary-Treasurer

BEFORE THE  
BOARD OF MEDICAL QUALITY ASSURANCE  
STATE OF CALIFORNIA

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Against:	)	
	)	
VICTOR GUBERSKY, M.D.	)	CASE NO. D-3015
	)	
Respondent.	)	N-21073
	)	

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PROPOSED DECISION

The matter came on for hearing before Robert R. Coffman, Administrative Law Judge, Office of Administrative Hearings, on November 15, 1983 in Sacramento, California.

June Long, Deputy Attorney General, represented the complainant.

Robert J. Sullivan, Attorney at Law, represented respondent Victor Gubersky, M.D.

Evidence was received, the hearing was closed and the matter was submitted.

The Administrative Law Judge certifies this decision and recommends its adoption.

FINDINGS OF FACT

I

Robert G. Rowland made the accusation in his official capacity as the Executive Director of the Division of Medical Quality, Board of Medical Quality Assurance.

II

On or about January 4, 1965, the board issued to respondent Victor R. Gubersky physician and surgeon certificate number

C-26785. At all times mentioned herein said license has been and now is in full force and effect.

### III

At all times mentioned herein, phenyl-2-propanone (hereinafter "P2P") was and is a Schedule II controlled substance as defined by federal law.

### IV

At all times mentioned herein P2P was and is a substance listed in Health & Safety Code Section 11100, subdivision (a)(1).

### V

On or about January 8, 1982, respondent was convicted following his plea of guilty to violation of sections 955c and 846 of title 21, United States Code (Conspiracy); crimes of dishonesty and corruption which are substantially related to the qualifications, functions or duties of a physician and surgeon.

### VI

As a result of the above conviction, respondent was sentenced to three years probation and fined \$10,000. Respondent's \$9,000 automobile was also impounded by the government.

### VII

The circumstances surrounding the above conviction are as follows:

Approximately April 1981, respondent was approached by a Canadian acquaintance and business associate to act as a "broker" in obtaining P2P, the principal ingredient in the manufacture of amphetamines, for an unnamed source in Canada. The scheme included the conversion of P2P into "speed" (methamphetamine) and the illegal importation of speed into the United States from Canada.

Respondent negotiated for the purchase of methylamine, a substance used to convert P2P into speed, and 55 gallons of P2P, making a \$13,000 down payment for these substances. In August 1981, respondent took possession of a sample of four (4) ounces of P2P from the seller. On September 1, 1981 respondent was arrested after meeting with his Canadian acquaintance and another co-conspirator at a New York City restaurant.

While respondent may have initially believed that the transaction was legal, he became aware of the illegality of the transaction by June 1981, long before it was consummated. He had ample opportunity to withdraw from the transaction. Respondent at all times was acting as a middle man or broker and was not to be involved in the actual conversion of the P2P or distribution of the speed.

Respondent's contention that he was suffering from an "impaired state of mind" during April-September 1981, was not established by the evidence. He did have a drinking problem and was drinking heavily during this period except for a month (May 12 to June 10) he spent at an alcoholic rehabilitation clinic. He also attended alcoholic anonymous meetings. Nevertheless, he was able to function as medical director of a large drug manufacturing company. Irrespective of the factors that may have contributed to his actions, his conduct was extremely serious and demonstrated that he was not able to practice medicine in a manner consistent with the public health, safety and welfare.

#### VIII

Respondent graduated from the University of Alberta Medical School in 1959, interned in Alberta, and completed a residency in dermatology at the Cleveland Clinic, Cleveland, Ohio, 1961-1964.

From 1964-1975 he was employed in various capacities by Syntex, a Palo Alto pharmaceutical company. His major involvement at Syntex was in research, primarily with cortical steroids and anti-inflammatory agents. In 1966, he was appointed Medical Director of Syntex's Canadian subsidiary and eventually became president of the Canadian company. In 1974, he was asked to leave the company because of his personal behavior which he attributes to a drinking problem.

During 1976-1978, respondent was employed as a medical director for a New Jersey drug firm, and from 1978 to October 1981, as an associate medical director for Bristol Myers.

#### IX

Since moving to Sacramento in September 1982, respondent has conducted a private practice limited to dermatology. He practices three full days per week and two 1/2 days, seeing approximately 22 patients per 8-9 hour day.

Respondent meets for 1 to 2 hours each Wednesday evening with four other dermatologists to exchange information, ideas, and developments related to the practice of dermatology.

Since October 1981, he has completed numerous continuing education courses, including 100 hours of Category I during 1982.

He receives medical care for a heart condition following a 1983 heart attack that resulted in substantial damage to the heart, and for a vascular condition.

He is being treated by Dr. Lockner, an internist who devotes a considerable portion of his practice to the rehabilitation of alcoholics and also receives psychotherapy twice a month from Dr. Nemeth, a clinical psychologist. Nemeth, who recommends continued psychotherapy to at least May 1984, believes respondent has made substantial progress and that his prognosis for recovery is favorable.

Respondent attends AA meetings three times per week.

While respondent has made substantial progress toward rehabilitation, most of his efforts have been recent, commencing subsequent to the filing of the Accusation herein. He started seeing Nemeth in May 1983, Lockner in June 1983, and began AA meetings three times per week in September 1983. In August 1983, respondent was still consuming alcoholic beverages (there was no evidence such consumption was excessive). Respondent's efforts and progress to date are laudatory, but a continuation of his recent program over a longer period of time is necessary before he can practice safely without restrictions.

#### DETERMINATION OF ISSUES

##### I

Exhibit 3 in evidence includes the indictment and a judgement of conviction based on respondent's guilty plea to count I of the indictment. The indictment alleges in detail the objects and means of the conspiracy and the overt acts committed in furtherance of the conspiracy.

Respondent has no objection to the conviction and plea of guilty to the sections charged, but he objects to the receipt of the indictment except as hearsay evidence permitted under Government Code Section 11513(c).

The objection is overruled. The plea of guilty is an admission of all the matters contained in count I of the indictment. While the judgement of conviction, based on the plea of guilty, is conclusive proof of the fact of conviction, it is not

conclusive as to all the facts contained in the indictment. Nevertheless, the plea of guilty to count I of the indictment is an admission of the matter contained in count I and is admissible as an exception to the hearsay rule. Such evidence, like most evidence, is not conclusive but may be controverted by other evidence including the respondent's testimony.

## II

Cause was established for discipline under Sections 2236(a), 2237(a), and 2234(e) of the Business and Professions Code.

## III

A violation of Health & Safety Code Section 11104 was not established.

## ORDER

Certificate number C-26785 issued to respondent Victor R. Gubersky is revoked. However, revocation is stayed and respondent is placed on probation for 10 years upon the following terms and conditions:

1. Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedule V of the Act.

Respondent shall immediately surrender respondent's current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to the Schedule authorized by this order.

2. Respondent shall abstain completely from the use of alcoholic beverages.

3. Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Division or its designee.

4. Within 30 days of the effective date of this decision, respondent shall submit to the Division for its prior approval an alcohol rehabilitation program in which respondent shall participate at least weekly for at least 50 weeks of the calendar year for the duration of probation. In the quarterly reports to the Division, respondent shall provide documentary evidence of continuing participation in this program. The program shall include regular attendance at Alcoholic Anonymous meetings.

5. Within 20 days of the effective date of this decision, respondent shall submit to the Division for its prior approval the

name and qualifications of a psychotherapist of respondent's choice. Upon the approval, respondent shall undergo and continue treatment until the Division deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division. The Division may require respondent to undergo psychiatric evaluations by a Division-appointed psychiatrist.

6. During probation, respondent's practice shall be limited solely to the practice of dermatology.

7. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

8. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

9. Respondent shall comply with the Division's probation surveillance program.

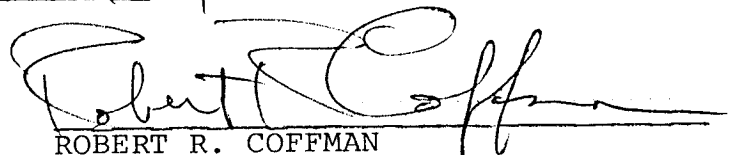
10. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

11. In the event respondent should leave California to reside or to practice outside the State, respondent must notify in writing the Division of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

12. Upon successful completion of probation, respondent's certificate will be fully restored.

13. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Dated: December 2, 1983.



ROBERT R. COFFMAN  
Administrative Law Judge  
Office of Administrative Hearings

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of the State of California  
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5 Attorneys for Complainant

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7  
8 BEFORE THE  
9 DIVISION OF MEDICAL QUALITY  
10 BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

11 In the Matter of the Accusation ) No. D-3015  
12 Against: )  
VICTOR GUBERSKY, M.D. ) ACCUSATION  
13 186 Calvin Street )  
Westwood, New Jersey )  
14 Certificate No. C-26785 )  
15 Respondent. )  
16

17 Complainant alleges that:

18 1. Complainant, Robert G. Rowland, is the Executive  
19 Director of the Division of Medical Quality, Board of Medical  
20 Quality Assurance, State of California (hereinafter "board")  
21 and makes and files this accusation solely in his official  
22 capacity.

23 2. On or about January 4, 1965, the board issued to  
24 Victor R. Gubersky (hereinafter "respondent") physician and  
25 surgeon certificate number C-26785. At all times mentioned  
26 herein said license has been and now is in full force and  
27 effect.



1           3. Section 2220 of the Business and Professions Code  
2 (all sectional references are to the Business and Professions  
3 Code unless otherwise indicated) provides, in pertinent part,  
4 that the board may take action against all persons guilty of  
5 violating the provisions of chapter 5 (medicine) of division 2  
6 (healing arts) of the Business and Professions Code.

7           4. Section 2236, subdivision (a), provides in  
8 pertinent part, that the conviction of any offense  
9 substantially related to the qualifications, functions, or  
10 duties of a physician and surgeon constitutes unprofessional  
11 conduct.

12           5. Section 2237, subdivision (a), provides in  
13 pertinent part, that the conviction of a charge of violating  
14 any federal statutes or regulations or any statute or  
15 regulation of this state, regulating narcotics, dangerous  
16 drugs, or controlled substances, constitutes unprofessional  
17 conduct. A plea of guilty is deemed to be a conviction within  
18 the meaning of this section.

19           6. Section 955c of Title 21 United States Code  
20 provides that any person who attempts or conspires to commit  
21 any offense defined in section 955a or 955d of this title is  
22 punishable by imprisonment or fine or both which may not exceed  
23 the maximum punishment prescribed for the offense, the  
24 commission of which was the object of the attempt or conspiracy.

25           7. Section 846 of title 21 United States Code  
26 provides that any person who attempts or conspires to commit  
27 any offense defined in this subchapter is punishable by

1 imprisonment or fine or both which may not exceed the maximum  
2 punishment prescribed for the offense, the commission of which  
3 was the object of the attempt or conspiracy.

4 11. At all times mentioned herein, phenyl-2-propanone  
5 (hereinafter "P2P") was and is a schedule II controlled  
6 substance as defined by section 1308.12, subdivision (f)(1), of  
7 title 21, Code of Federal Regulations.

8 9. Section 11104 of the Health and Safety Code  
9 provides in pertinent part, that any person who sells,  
10 transfers, or otherwise furnishes any of the substances listed  
11 in subdivision (a) of section 11100 with knowledge that the  
12 recipient will use the substance to unlawfully manufacture a  
13 controlled substance is guilty of a felony.

14 10. At all times mentioned herein P2P was and is a  
15 substance listed in section 11100, subdivision (a)(1).

16 11. Section 2234, subdivision (e), provides that the  
17 commission of any act involving dishonesty or corruption which  
18 is substantially related to the qualifications, functions or  
19 duties of a physician and surgeon constitutes unprofessional  
20 conduct.

21 12. Respondent is subject to disciplinary action  
22 pursuant to sections 2236, subdivision (a); 2237, subdivision  
23 (a), in conjunction with sections 955c and 846 of title 21  
24 United States Code and section 11104 of the Health and Safety  
25 Code; and section 2234, subdivision (e), as follows:

26 On or about January 8, 1982, respondent was convicted  
27 following his plea of guilty to violation of sections 955c

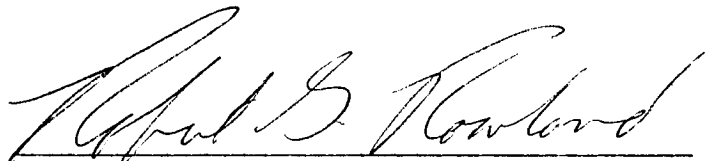
1 and 846 of title 21, United States Code; crimes of  
2 dishonesty and corruption which are substantially related  
3 to the qualifications, functions or duties of a physician  
4 and surgeon.

5 WHEREFORE, complainant prays that a hearing be held on  
6 the matters alleged herein and following said hearing, that the  
7 board issue a decision:

8 1. Suspending or revoking license number C-26785  
9 heretofore issued to respondent; and

10 2. Taking such other and further action deemed  
11 necessary and proper.

12 DATED: February 3, 1983.

13  
14 

15 ROBERT G. ROWLAND  
16 Executive Director  
17 Board of Medical Quality Assurance  
18 State of California

19 Complainant  
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26 ALM:jmm

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